No. 90-75

In The

Supreme Court of the United States

October Term, 1990

REUBEN J. BARTON; WILLIAM BEE; CARL D. CAIN; JAMES E. DAVIS; ULYSSES G. DEAN; CHARLES E. EVERETT; JOHN A. FLANAGAN; FRANK FOMINKO; MICHAEL L. FRAZIER; ROBERT H. FRAZIER; WOODY D. HAMRICK; CHARLES E. KNICELEY; MARK E. LABENNE; CHARLES G. LAFFERTY; MARK LANGBEIN; JAMES E. LANTZ; KENNETH L. MATHENEY; WILLIAM L. MAY; FREDERICK MCCARTNEY; HOWARD B. MITCHELL; JAMES E. NUTTER; MICHAEL A. NUTTER; JAMES R. PATTON; ISAAC S. PAUGH; STEPHEN B. RIEL; WILLIAM RINEHART; GLENN SHAW, JR.; LOWELL STOUT; DENNIS C. STUTLER; JOHN F. SWENSKIE; RONALD J. WEBB; LAWRENCE D. WILCOX,

Petitioners,

v.

THE CREASEY COMPANY OF CLARKSBURG, a West Virginia corporation, and FOX GROCERY CO., a West Virginia corporation,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

*Fred F. Holroyd
and
Brian D. Yost
Holroyd & Yost
Attorneys-at Law
209 West Washington Street
Charleston, West Virginia 25302
(304) 343-7501
*Counsel of Record for Respondents

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QUESTION PRESENTED

WHETHER THE PLAINTIFFS' CAUSE OF ACTION, WHICH ARISES EXCLUSIVELY FROM A COLLECTIVE BARGAINING AGREEMENT CAN BE BROUGHT UNDER STATE LAW OR IS PREEMPTED BY SECTION 301 OF THE NATIONAL LABOR RELATIONS ACT.

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SUMMARY OF ARGUMENT

a. Petitioners' cause of action below is preempted by Section 301 of the National Labor Relations Act, as clearly, or at least "arguably" arising out of a union contract;

b. Actions under Section 301 of the National Labor Relations Act are subject to the six month statute of limitations set forth in Section 10(b) of said Act;

c. The action herein was not filed within six months of the events complained of and allegedly giving rise to the cause of action;

d. The order and opinion of the Fourth Circuit Court of Appeals is consistent with Federal Law and with the decisions of this Honorable Court.

REASON FOR DENYING THE WRIT

As found by the Court of Appeals, the Respondents had a contract with the Teamsters union providing for, among other things, vacation pay for certain of its employees. Respondent's interpretation of this contract permitted it not to pay vacation pay to temporary or part time employees. Petitioners were terminated under the terms of that union contract following an economic cut back in the work force. They were not paid vacation pay at the time of their termination.

Petitioners' complaint alleges that Respondents did not pay their accumulated vacation pay "as provided by the parties collective bargaining agreement . . . ", and further, that other parties of the same union contract,

" . . . created an implied contract to pay all employees severance pay . . . . " (See Paragraph II of the Court of Appeals Decision.)

Respondents, in its removal from state court and its argument before the Fourth Circuit, claimed federal preemption under Section 301 of the National Labor Relations Act. Section 301 provides that a suit for breach of a union contract can be brought in the federal courts. Thereupon, based on another provision of the National Labor Relations Act, Section 10(b), Respondents were successful in having the complaint dismissed. Section 10(b) provides a six month statute of limitations for filing a suit for breach of a union contract. The action herein was not filed within six months of the events complained of.

This court has held that if a case arises under a union contract, or "arguably" arises under a union contract, it is preempted by Federal law. This court noted in *Avco Corporation v. Machinist Union*, 390 U.S. 597 (1968), " . . . when the heart of the complaint is a clause in the collective bargaining agreement that complaint arises under Federal law . . . the preemptive force of Section 301 is so powerful as to displace entirely a state cause of action for violation of collective bargaining contracts." This court further held in *Franchise Tax Board v. Construction Laborers*, 463 U.S. 1 (1983), that " . . . any such suit is purely a creature of federal law notwithstanding to the fact that state law would provide a cause of action in the absence of Section 301 . . . . "

Petitioners' complaint does not allege, nor does their counsel attempt to prove, that a claim for vacation benefits arise anywhere except out of the union contract. The claim for severance pay by Petitioners' complaint arises only out of their assertion that the offer of severance was made to certain management officials and therefore should be made to Petitioners. (See Paragraph I of Court of Appeals' Decision.) However, there is an additional clause in the union contract which prohibits such a claim. This contract language provides, "The company retains all rights, powers, and authority exercised and had by it prior to the time the union became recognized . . . , except as specifically limited by express provisions, of this agreement." Thus, the claim for additional benefits is barred by the union contract. If somehow an argument could be made that it is not barred then the above cited language would have to be interpreted. Surely the claim is at least "arguably" prohibited by this language. This court recently faced this issue in *United Steelworkers v. Rawson*, ___ U.S. ___, 134 LRRM 2153 (May 14, 1990), and noted that the preemptive force of Section 301 extends beyond state law contract actions if the matter claimed is created by a collective bargaining agreement and does not exist without such agreement. This court again noted that if the basis of the suit cannot stand without the labor agreement it is preempted. See in this regard also *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 118 LRRM 3345, (1985); *Electrical Workers (IBEW) v. Hechler*, 481 U.S. 851, 125 LRRM 2353 (1987). All of the facts in this case found by the Court of Appeals, and in Petitioners' complaint point to the inescapable conclusion that their claims arise

totally from rights or benefits allegedly given Petitioners in the labor contract.

CONCLUSION

The claims of Petitioners arise under the union contract. Without the union contract they would have no claim. Petitioners cite no West Virginia statute or case giving them a right to vacation pay or severance pay. There is no such right in state law. The right to both or either is a creature of the union contract. Even Petitioners plead in their complaint that their rights, herein asserted, arise out of the union contract. Therefore the matter is preempted by Section 301 of the Federal Labor Law, including the six month statute of limitations, the suit was not filed within six months. The complaint was properly dismissed. This court should therefore deny Petitioners' claim for a Writ of Certiorari.

Respectfully submitted,

THE CREASEY COMPANY
OF CLARKSBURG
FRED F. HOLYROYD
BRIAN D. YOST
Counsel for Respondents

HOLROYD & YOST
Attorneys at Law
209 West Washington Street
Charleston, West Virginia 25302